

- SUBJECT:** Notification to check verification entities about customer's identity theft
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 8 ayes — Giddings, Elkins, Darby, Bohac, Castro, Martinez, Solomons, Zedler
- 0 nays
- 1 absent — Bailey
- WITNESSES:** For — Beth O'Brien, Public Citizen
- Against — None
- On — John Heasley, Texas Bankers Association; Jeff Huffman, Texas Credit Union League; Dwain James, American Collectors Association of Texas; Randall S. James, Texas Bank Commissioner, Texas Department of Banking; Steve Scurlock, Independent Bankers Association of Texas (IBAT)
- BACKGROUND:** When a customer of a financial institution is a victim of identity theft and the person notifies the institution, the customer's account usually is closed straight away. However, the financial institution generally takes no steps to inform other affected financial entities, such as check verification companies. Often check verification entities continue cashing bad checks in the customer's name without knowing that the customer is a victim of identity theft.
- DIGEST:** CSHB 2002 would add Business and Commerce Code, sec. 35.595 to require a financial institution to notify check verification entities that a customer was a victim of identity theft if the customer submitted to the financial institution:
- a copy of a police report of an offense under Penal Code, sec. 32.51 relating to the crime;
 - a sworn statement by the customer that the person was a victim of identity theft; and

- written authorization to submit the information to the electronic notification established under the Finance Code, sec. 11.309 for secure distribution to check verification entities.

A financial institution that received the required customer documents would submit the information, not later than the second business day after the date the customer provided the documents, to the electronic notification system established by the bill. The information submitted by a financial institution would include:

- the customer's name, address, phone number, date of birth, and driver's license number or government-issued identification number;
- the financial institution account number of any account that had been compromised by the alleged offense;
- the financial institution routing number; and
- the number on any check that had been lost, stolen, or compromised.

A check verification entity could not recommend acceptance or approval of a check or similar order drawn on an account specified in the notification if the check verification entity received notification through the electronic notification system or if a customer presented to the check verification entity:

- a copy of a police report of the specified offense;
- a sworn statement by the customer that the person was the victim of the particular offense; and
- the information required to be submitted to the financial institution.

A financial institution or check verification entity, or an officer, director, employee, or agent of the institution or entity would not be liable for damages resulting from providing notification or failing to recommend acceptance or approval of a check or similar order.

The Finance Commission of Texas could adopt rules to implement the provisions of the bill; to clarify the duties and responsibilities of a customer, financial institution, or check verification entity; and to specify how an erroneous notification could be withdrawn, amended, or corrected.

CSHB 2002 would amend Finance Code, sec. 11.309 to require that the finance commission adopt rules:

- requiring a check verification entity to register with the banking commissioner at least annually and providing to the banking commissioner the information that the finance commission determined was necessary to enable a financial institution or check verification entity to comply with the requirements of the bill;
- authorizing the banking commissioner to charge a check verification entity a reasonable annual fee of not more than \$100 to register with the commissioner; and
- requiring the banking commissioner to establish an electronic notification system – through secure e-mail or another secure system – to be used by a financial institution to notify check verification entities.

The Finance Commission could not impose a duty on the banking commissioner to verify the validity or completeness of information transmitted through the electronic notification system. The banking commissioner could solicit and accept gifts, grants, and donations from public and private entities to establish and maintain the secure notification system.

The bill would take effect September 1, 2007. A financial institution would not be required to comply before March 1, 2008.

NOTES:

During the 2005 regular session, a similar bill, HB 2899 by Giddings, was reported favorably by the Business and Industry Committee, but died in the Calendars Committee.